

COMMITTEE REPORT

Mr. President: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedure, to which was referred Engrossed House Bill 1283 because it conflicts with SEA 57-2002 without properly recognizing the existence of SEA 57-2002, has had Engrossed House Bill 1283 under consideration and begs leave to report back to the Senate with the recommendation that Engrossed House Bill 1283 be corrected as follows:

- 1 Page 6, after line 12, begin a new paragraph and insert:
- 2 "SECTION 5. IC 32-28-3-1, AS ADDED BY SEA 57-2002,
- 3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2002]: Sec. 1. (a) A contractor, a subcontractor, a mechanic,
- 5 a lessor leasing construction and other equipment and tools,
- 6 whether or not an operator is also provided by the lessor, a
- 7 journeyman, a laborer, or any other person performing labor or
- 8 furnishing materials or machinery, including the leasing of
- 9 equipment or tools, for:
- 10 (1) the erection, alteration, repair, or removal of:
- 11 (A) a house, mill, manufactory, or other building; or
- 12 (B) a bridge, reservoir, system of waterworks, or other
- 13 structure; or
- 14 (2) the construction, alteration, repair, or removal of a walk
- 15 or sidewalk located on the land or bordering the land, a
- 16 stile, a well, a drain, a drainage ditch, a sewer, or a cistern;
- 17 or
- 18 (3) any other earth moving operation;
- 19 may have a lien as set forth in this section.
- 20 (b) A person described in subsection (a) may have a lien
- 21 separately or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract for the construction, alteration, or repair of:

- (1) a Class 2 structure (as defined in IC 22-12-1-5);
- (2) an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or
- (3) property that is:

(A) owned, operated, managed, or controlled by **a:**

- (i) a public utility (as defined in IC 8-1-2-1);
- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4; ~~or~~
- (v) **rural telephone cooperative corporation formed under IC 8-1-17; or**
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, **telecommunications services**, or power to the public;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real estate to be improved;
- (3) be acknowledged as provided in the case of deeds; and
- (4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after

1 the date of execution of the contract.

2 A contract containing a provision or stipulation described in
3 subsection (e) does not affect a lien for labor, material, or
4 machinery supplied before the filing of the contract with the
5 recorder.

6 (g) Upon the filing of a contract under subsection (f), the
7 recorder shall:

8 (1) record the contract at length in the order of the time it
9 was received in books provided by the recorder for that
10 purpose;

11 (2) index the contract in the name of the:

12 (A) contractor; and

13 (B) owner;

14 in books kept for that purpose; and

15 (3) collect a fee for recording the contract as is provided
16 for the recording of deeds and mortgages.

17 (h) A person, firm, partnership, limited liability company, or
18 corporation that sells or furnishes on credit any material, labor,
19 or machinery for the alteration or repair of an owner occupied
20 single or double family dwelling or the appurtenances or
21 additions to the dwelling to:

22 (1) a contractor, subcontractor, mechanic; or

23 (2) anyone other than the occupying owner or the owner's
24 legal representative;

25 must furnish to the occupying owner of the parcel of land where
26 the material, labor, or machinery is delivered a written notice of
27 the delivery or work and of the existence of lien rights not later
28 than thirty (30) days after the date of first delivery or labor
29 performed. The furnishing of the notice is a condition precedent
30 to the right of acquiring a lien upon the lot or parcel of land or
31 the improvement on the lot or parcel of land.

32 (i) A person, firm, partnership, limited liability company, or
33 corporation that sells or furnishes on credit material, labor, or
34 machinery for the original construction of a single or double
35 family dwelling for the intended occupancy of the owner upon
36 whose real estate the construction takes place to a contractor,

subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

- (1) furnish the owner of the real estate:
 - (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
 - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;
 with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
- (2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 6. IC 32-28-3-5, AS ADDED BY SEA 57-2002, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 24-4.5-1-301);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The

recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5).

(2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by:

(i) a public utility (as defined in IC 8-1-2-1);

(ii) a municipally owned utility (as defined in IC 8-1-2-1);

(iii) a joint agency (as defined in IC 8-1-2.2-2);

(iv) a rural electric membership corporation formed under IC 8-1-13-4; or

(v) **a rural telephone cooperative corporation formed under IC 8-1-17; or**

(vi) a not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, **telecommunications services**, or power to the public.

SECTION 7. IC 32-28-3-16, AS ADDED BY SEA 57-2002, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY

1, 2002]: Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, **rural telephone cooperative corporation formed under IC 8-1-17**, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, **telecommunications services**, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 8. IC 32-28-3-18, AS ADDED BY SEA 57-2002, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual

1 relationship.

2 (b) This section does not apply to a construction contract for
3 the construction, alteration, or repair of the following:

4 (1) A Class 2 structure (as defined in IC 22-12-1-5).

5 (2) An improvement on the same real estate auxiliary to a
6 Class 2 structure (as defined in IC 22-12-1-5).

7 (3) Property that is:

8 (A) owned, operated, managed, or controlled by a:

9 (i) public utility (as defined in IC 8-1-2-1);

10 (ii) municipally owned utility (as defined in
11 IC 8-1-2-1);

12 (iii) joint agency (as defined in IC 8-1-2.2-2);

13 (iv) rural electric membership corporation formed
14 under IC 8-1-13-4; ~~or~~

15 (v) **rural telephone cooperative corporation**
16 **formed under IC 8-1-17; or**

17 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
18 regulated under IC 8; and

19 (B) intended to be used and useful for the production,
20 transmission, delivery, or furnishing of heat, light,
21 water, **telecommunications services**, or power to the
22 public.

23 (c) An obligor's receipt of payment from a third person ~~shall~~
24 **may** not:

25 (1) be a condition precedent to;

26 (2) limit; or

27 (3) be a defense to;

28 the provider's right to record or foreclose a lien against the real

1 estate that was improved by the provider's labor, material, or
2 equipment.".

(Reference is to EHB 1283 as printed February 20, 2002.)

Senator GARTON, Chairperson

Senator YOUNG, R.M.M.

Senator KENLEY